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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/762,782

01/23/2004

Stephen John Lawson

6130

7590

07/28/2006

FREDERICK KAUFMAN
SUITE 403
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EXAMINER

MAGUIRE, LINDSAY M

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/762,782	Applicant(s) LAWSON ET AL.	
	Examiner Lindsay M. Maguire	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Final Office Action is in response to the application filed on January 23, 2004, the election filed on December 16, 2005 by which claims 1 and 2 were cancelled and claim 3 was added, the election filed on February 2, 2006, and the amendments filed on May 1, 2006 in which claim 3 was cancelled and claim 4 was added.

Election/Restrictions

Applicant's election without traverse of claim 3 in the reply filed on February 2, 2006 is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 is rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a

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manner as to present a complete operative device. Note the format of the claims in the patent(s) cited. The following are examples. Applicant should review the claim in its entirety.

Claim 4 recites the limitation "the diameter" in line 8. There is insufficient antecedent basis for this limitation in the claim. It is noted that Applicant has failed to set forth the shape of the perforation; therefore it is unclear to which diameter the applicant is referring.

Claim 4 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: "in the proximity of one extremity of said flat base" (lines 12-13) it is unclear what the applicant regards as "in the proximity" which is a relative term and therefore one of ordinary skill in the art would be unable to ascertain the requisite degree of the claimed invention.

Claim 4 recites the limitation "said perforation" in line 14. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "said distance" in line 15. There is insufficient antecedent basis for this limitation in the claim.

The recitation, "both the diameter of each one of said pin and a distance between said two pins are so commensurate with both the diameter of each said perforation and said distance between two consecutive perforations that a light-press fit between the former and the later when engaged together occurs" in lines 13-16 of claim 4, and the recitation, "the internal diameter of said socket being commensurate with the external diameter of said tubular element" in lines 19-20 of claim 4, render the claims indefinite. In particular, neither the "perforations" or the "tubular element" are an element of the claimed device and it is improper to seek to define claimed structure based on a comparison to some unclaimed element. In this case, the boundaries of the claims cannot be properly ascertained because one would not know whether their device infringed the claims until someone else later added "perforations" or a "tubular element". In other words, a device as defined in the claims would infringe the claims with one particular set of "perforations" and "tubular element" while the exact same device would not infringe the claims when another set of "perforations" and "tubular element" was used. Accordingly, the features of the device, itself, must be defined instead of relying upon a comparison with an ascertained element.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: "disposed in proximity to another extremity of said flat base" (line 17) it is unclear what the applicant regards

as "in proximity to" which is a relative term and therefore one of ordinary skill in the art would be unable to ascertain the requisite degree of the claimed invention.

Claim 4 recites the limitation "the external diameter" in line 20. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "said tubular element" in line 20. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

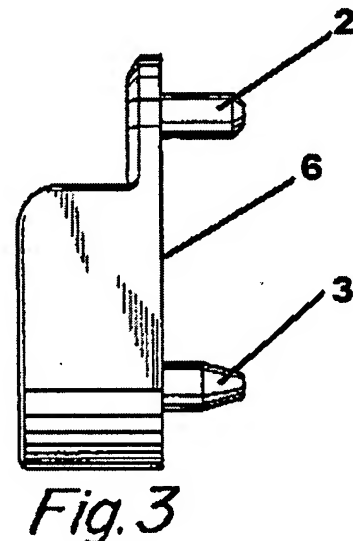
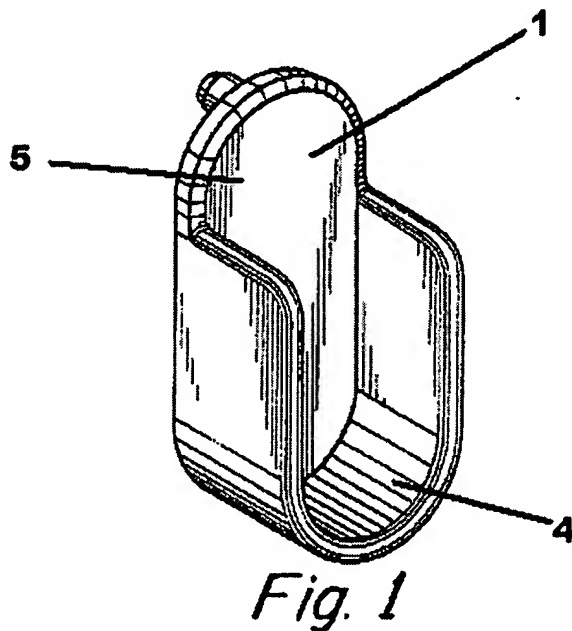
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. Des. 319,573 (Rogers '573).

Rogers '573 shows a bracket incorporating a flat base (1; see marked-up copy of Figures 1 and 3 below) having rear (6) and front (5) faces and two pins (2 and 3) projecting from said rear face (6); and a socket (4; it is noted that the definition of a socket, according to Webster's II Dictionary Third Edition, is "an opening into which something fits) on said front face (5) of said flat base (1).

It is noted that since the "inclined support-display assembly" (and all its components) are being functionally recited in lines 1-11 of claim 4, a reference need only be capable of being used with such structure in order to meet the claim language. Thus, although Rogers '573 does not show such structure, it is capable of being used in such a way, and thus is considered to meet the claim language.



Response to Arguments

Applicant's arguments filed on May 1, 2006 have been fully considered but they are not persuasive.

Applicant's arguments that "the lack of antecedent basis rejection for the limitation "the diameter" is not well founded" in paragraphs 1-3 of the "Remarks/Arguments" section are acknowledged. However, applicant has failed to set forth any limitation as to the shape of the perforations. It would be improper to assume that these perforations are circular in nature and would have a diameter. Therefore, it is unclear to which "diameter" the applicant is referring to in line 8 of claim 4.

With respect to applicant's argument that the word "closely" appears in previously issued US Patents, the office does not comment on the validity of issued US Patents.

Regarding applicant's arguments that the lack of antecedent basis rejections are unfounded for "said perforation", "said distance", "the external diameter", and "said tubular element" since the wording of both appears in the preamble of the claim, are acknowledged. However, the recitations "the diameter of each said perforation", "said distance between two consecutive perforations", and "a tubular element" have not been given patentable weight because the recitations occur in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

In response to applicant's argument that "there are no teachings, suggestions or an interference in the above reference that would have lead one to use the bracket with furniture provided with the mentioned perforations", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Pat. No. 4,405,108 (Muirhead '108) and U.S. Pat. No. 5,894,610 (Winter '610), for disclosing various brackets with socket and pin designs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lindsay M. Maguire whose telephone number is 571-272-6039. The examiner can normally be reached on M-F: 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lindsay M. Maguire
July 21, 2006



RICHARD E. CHILCOT, JR.
SUPERVISORY PATENT EXAMINER